

Assembly Bill No. 1532

Passed the Assembly August 31, 2012

Chief Clerk of the Assembly

Passed the Senate August 31, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12894 of the Government Code, and to add Chapter 4.1 (commencing with Section 39710) to Part 2 of Division 26 of the Health and Safety Code, relating to greenhouse gas emissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1532, John A. Pérez. California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. The act authorizes the state board to include use of market-based compliance mechanisms.

Existing law imposes limitations on any link, as defined, between the state and another state, province, or country for purposes of a market-based compliance mechanism by, among other things, prohibiting any state agency, including the state board, from taking any action to create such a link unless the state agency notifies the Governor, and the Governor issues specified written findings on the proposed link that consider the advice of the Attorney General.

This bill would prohibit the Governor's written findings on the proposed link from being subject to judicial review.

Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation by the Legislature.

This bill would require the moneys in the Greenhouse Gas Reduction Fund to be used for specified purposes. The bill would require the Department of Finance, in consultation with the state board and any other relevant state entity, to develop, as specified,

a 3-year investment plan that includes specified analysis and information and to submit the plan to the Legislature, as specified. The bill would require the Department of Finance to submit a report no later than March 1, 2014, and annually thereafter, to the appropriate committees of the Legislature containing specified information.

This bill would make its provisions contingent on the enactment of other legislation, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 12894 of the Government Code is amended to read:

12894. (a) (1) The Legislature finds and declares that the establishment of nongovernmental entities, such as the Western Climate Initiative, Incorporated, and linkages with other states and countries by the State Air Resources Board or other state agencies for the purposes of implementing Division 25.5 (commencing with Section 38500) of the Health and Safety Code, should be done transparently and should be independently reviewed by the Attorney General for consistency with all applicable laws.

(2) The purpose of this section is to establish new oversight and transparency over any such linkages and related activities undertaken in relation to Division 25.5 (commencing with Section 38500) of the Health and Safety Code by the executive agencies in order to ensure consistency with applicable laws.

(b) (1) The California membership of the board of directors of the Western Climate Initiative, Incorporated, shall be modified as follows:

(A) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Senate Committee on Rules.

(B) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Speaker of the Assembly.

(C) The Chairperson of the State Air Resources Board or her or his designee.

(D) The Secretary for Environmental Protection or his or her designee.

(2) Sections 11120 through 11132 do not apply to the Western Climate Initiative, Incorporated, or to appointees specified in subparagraphs (C) and (D) of paragraph (1) when performing their duties under this section.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee, consistent with that required for Department of Finance augmentation or reduction authorizations pursuant to subdivision (e) of Section 28.00 of the annual Budget Act, of any funds over one hundred fifty thousand dollars (\$150,000) provided to the Western Climate Initiative, Incorporated, or its derivatives or subcontractors no later than 30 days prior to transfer or expenditure of these funds.

(d) The Chairperson of the State Air Resources Board and the Secretary for Environmental Protection, as the California voting representatives on the Western Climate Initiative, Incorporated, shall report every six months to the Joint Legislative Budget Committee on any actions proposed by the Western Climate Initiative, Incorporated, that affect California state government or entities located within the state.

(e) For purposes of this section, “link,” “linkage,” or “linking” means an action taken by the State Air Resources Board or any other state agency that will result in acceptance by the State of California of compliance instruments issued by any other governmental agency, including any state, province, or country, for purposes of demonstrating compliance with the market-based compliance mechanism established pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations.

(f) A state agency, including, but not limited to, the State Air Resources Board, shall not link a market-based compliance mechanism established pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations with any other state, province, or country unless the state agency notifies the Governor that the agency intends to take such action and the Governor, acting in his or her independent capacity, makes all of the following findings:

(1) The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas

reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(2) Under the proposed linkage, the State of California is able to enforce Division 25.5 (commencing with Section 38500) of the Health and Safety Code and related statutes, against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.

(3) The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(4) The proposed linkage and any related participation of the State of California in Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.

(g) The Governor shall issue findings pursuant to subdivision (f) within 45 days of receiving a notice from a state agency, and shall provide those findings to the Legislature. The findings shall consider the advice of the Attorney General. The findings to be submitted to the Legislature shall not be unreasonably withheld. The findings shall not be subject to judicial review.

SEC. 2. Chapter 4.1 (commencing with Section 39710) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.1. GREENHOUSE GAS REDUCTION FUND
INVESTMENT PLAN AND COMMUNITIES REVITALIZATION ACT

39710. For purposes of this part, fund means the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

39712. (a) (1) It is the intent of the Legislature that moneys shall be appropriated from the fund only in a manner consistent with the requirements of this part and Article 9.7 (commencing with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) The state shall not approve allocations for a measure or program using moneys appropriated from the fund except after determining, based on the available evidence, that the use of those moneys furthers the regulatory purposes of Division 25.5 (commencing with Section 38500) and is consistent with law. If any expenditure of moneys from the fund for any measure or project is determined by a court to be inconsistent with law, the allocations for the remaining measures or projects shall be severable and shall not be affected.

(b) Moneys shall be used to facilitate the achievement of reductions of greenhouse gas emissions in this state consistent with this division and, where applicable and to the extent feasible:

(1) Maximize economic, environmental, and public health benefits to the state.

(2) Foster job creation by promoting in-state greenhouse gas emissions reduction projects carried out by California workers and businesses.

(3) Complement efforts to improve air quality.

(4) Direct investment toward the most disadvantaged communities and households in the state.

(5) Provide opportunities for businesses, public agencies, nonprofits, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

(6) Lessen the impacts and effects of climate change on the state's communities, economy, and environment.

(c) Moneys appropriated from the fund may be allocated, consistent with subdivision (a), for the purpose of reducing greenhouse gas emissions in this state through investments that may include, but are not limited to, any of the following:

(1) Funding to reduce greenhouse gas emissions through energy efficiency, clean and renewable energy generation, distributed renewable energy generation, transmission and storage, and other related actions, including, but not limited to, at public universities, state and local public buildings, and industrial and manufacturing facilities.

(2) Funding to reduce greenhouse gas emissions through the development of state-of-the-art systems to move goods and freight, advanced technology vehicles and vehicle infrastructure, advanced biofuels, and low-carbon and efficient public transportation.

(3) Funding to reduce greenhouse gas emissions associated with water use and supply, land and natural resource conservation and management, forestry, and sustainable agriculture.

(4) Funding to reduce greenhouse gas emissions through strategic planning and development of sustainable infrastructure projects, including, but not limited to, transportation and housing.

(5) Funding to reduce greenhouse gas emissions through increased in-state diversion of municipal solid waste from disposal through waste reduction, diversion, and reuse.

(6) Funding to reduce greenhouse gas emissions through investments in programs implemented by local and regional agencies, local and regional collaboratives, and nonprofit organizations coordinating with local governments.

(7) Funding in research, development, and deployment of innovative technologies, measures, and practices related to programs and projects funded pursuant to this part.

39716. (a) The Department of Finance, on behalf of the Governor, and in consultation with the state board and any other relevant state entity, shall develop and submit to the Legislature at the time of the department's adjustments to the proposed 2013–14 fiscal year budget pursuant to subdivision (e) of Section 13308 of the Government Code a three-year investment plan. Commencing with the 2016–17 fiscal year budget and every three years thereafter, with the release of the Governor's budget proposal, the Department of Finance shall include updates to the investment plan following the public process described in subdivisions (b) and (c). The investment plan, consistent with the requirements of Section 39712, shall do all of the following:

(1) Identify the state's near-term and long-term greenhouse gas emissions reduction goals and targets by sector.

(2) Analyze gaps, where applicable, in current state strategies to meeting the state's greenhouse gas emissions reduction goals by sector.

(3) Identify priority programmatic investments of moneys that will facilitate the achievement of feasible and cost-effective greenhouse gas emissions reductions toward achievement of greenhouse gas reduction goals and targets by sector, consistent with subdivision (c) of Section 39712.

(b) (1) The state board shall hold at least two public workshops in different regions of the state and one public hearing prior to the Department of Finance submitting the investment plan.

(2) The state board shall, prior to the submission of each investment plan, consult with the Public Utilities Commission to ensure the investment plan is coordinated with, and does not conflict with or unduly overlap with, activities under the oversight or administration of the Public Utilities Commission undertaken pursuant to Part 5 (commencing with Section 38570) of Division 25.5 or other activities under the oversight or administration of the Public Utilities Commission that facilitate greenhouse gas emissions reductions consistent with this division. The investment plan shall include a description of the use of any moneys generated by the sale of allowances received at no cost by the investor-owned utilities pursuant to a market-based compliance mechanism.

(c) The Climate Action Team, established under Executive Order S-3-05, shall provide information to the Department of Finance and the state board to assist in the development of each investment plan. The Climate Action Team shall participate in each public workshop held on an investment plan and provide testimony to the state board on each investment plan. For purposes of this section, the Secretary of Labor and Workforce Development shall assist the Climate Action Team in its efforts.

39718. (a) Moneys in the fund shall be appropriated through the annual Budget Act consistent with the investment plan developed and submitted pursuant to Section 39716.

(b) Upon appropriation, moneys in the Greenhouse Gas Reduction Fund shall be available to the state board and to administering agencies for administrative purposes in carrying out this chapter.

(c) Any repayment of loans, including interest payments and all interest earnings on or accruing to any money, resulting from implementation of this chapter shall be deposited in the Greenhouse Gas Reduction Fund for the purposes of this chapter.

39720. (a) Notwithstanding Section 10231.5 of the Government Code, the Department of Finance shall submit a report on or before March 1, 2014, and annually thereafter, to the appropriate committees of the Legislature on the status of projects funded pursuant to this part and their outcomes.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 3. This act shall not become operative unless Senate Bill 535 of the 2011–12 Regular Session is enacted.

Approved _____, 2012

Governor